

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-95015; File No. SR-NYSECHX-2022-09)

June 1, 2022

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt a New Rule 11.2210

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on May 20, 2022, the NYSE Chicago, Inc. (“NYSE Chicago” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act⁴ and Rule 19b-4(f)(6) thereunder.⁵ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes, in connection with a companion filing to adopt investigation, disciplinary, sanction, and other procedural rules modeled on the rules of its affiliates, to adopt a new Rule 11.2210 governing communications with the public that would incorporate FINRA Rule 2210 by reference and rename and amend Article 8, Rule 13 governing advertising, promotion and telemarketing. The proposed rule change is available on the Exchange’s website

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

⁵ 17 CFR 240.19b-4(f)(6).

at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

In connection with a companion filing to adopt investigation, disciplinary, sanction, and other procedural rules modeled on the rules of its affiliates,⁶ the Exchange proposes to adopt a new Rule 11.2210 (Communications with the Public) governing communications with the public that would incorporate FINRA Rule 2210 by reference and rename and amend Article 8, Rule 13 governing advertising, promotion and telemarketing.

Background

Beginning in 2013, each of the Exchange's affiliates have adopted rules relating to investigation, discipline, sanction, and other procedural rules based on the rules of the Financial Industry Regulatory Authority ("FINRA").⁷ To facilitate rule harmonization among self-

⁶ See SR-NYSECHX-2022-10.

⁷ In 2013, the Commission approved the New York Stock Exchange LLC's ("NYSE") adoption of FINRA's disciplinary rules. See Securities Exchange Act Release No. 69045 (March 5, 2013), 78 FR 15394 (March 11, 2013) (SR-NYSE-2013-02). In 2016, NYSE American LLC ("NYSE American") adopted its Rule 8000 and Rule 9000 Series based

regulatory organizations, the Exchange has separately proposed the NYSE Chicago Rule 10.8000 and 10.9000 Series based on the text of the NYSE Arca Rule 10.8000 and Rule 10.9000 Series, with certain changes, as described in its companion filing.

The proposed NYSE Chicago Rule 10.8000 and 10.9000 Series contain rules that presume that the Exchange has adopted FINRA Rule 2210. Specifically, Rule 10.9551 (Failure to Comply with Public Communication Standards Pursuant to FINRA Rule 2210 as Incorporated by Reference in Rule 11.2210) would permit Exchange regulatory staff to issue a written notice requiring a Participant or Participant Firm to file communications with FINRA’s Advertising Regulation Department at least 10 days prior to use if the staff determined that the Participant or Participant Firm had departed from the standards of proposed Rule 11.2210. The Participant or Participant Firm could file a written request for a hearing with the Office of Hearing Officers pursuant to proposed Rule 10.9559. FINRA Rule 2210 proposed to be incorporated by reference in proposed Rule 11.2210 references the procedures in FINRA Rules 9551 and 9559, which are substantially the same as those in proposed Rules 10.9551 and 10.9559. Similarly, FINRA Rule 2210 proposed to be incorporated by reference in proposed Rule 11.2210 references the procedures in the FINRA Rule 9600 Series for obtaining exemptive relief as permitted under FINRA Rule 2210. The FINRA Rule 9600 Series is substantially the same as the proposed Rule

on the NYSE and FINRA Rule 8000 and Rule 9000 Series. See Securities Exchange Act Release Nos. 77241 (February 26, 2016), 81 FR 11311 (March 3, 2016) (SR-NYSEMKT-2016-30). In 2018, the Commission approved NYSE National, Inc.’s (“NYSE National”) adoption of the NYSE National Rule 10.8000 and Rule 10.9000 Series based on the NYSE American and FINRA Rule 8000 and Rule 9000 Series. See Securities Exchange Act Release No. 83289 (May 17, 2018), 83 FR 23968 (May 23, 2018) (SR-NYSENat-2018-02). In 2019, NYSE Arca, Inc. (“NYSE Arca”) adopted the NYSE Arca Rule 10.8000 and 10.9000 Series based on the NYSE American Rule 8000 and Rule 9000 Series. See Securities Exchange Act Release No. 85639 (April 12, 2019), 84 FR 16346 (April 18, 2019) (SR-NYSEArca-2019-15).

10.9600 Series.

Current Article 8, Rule 13 governs advertising, promotion and telemarketing.

Proposed Rule Change

Proposed Rule 11.2210 would provide that Participants, Participant Firms and covered persons shall comply with FINRA Rule 2210, which is incorporated by reference herein, as if such Rule were part of the Exchange's rules. The proposed rule would further provide that references to FINRA Rule 2210 would be construed as references to Rule 11.2210. The proposed rule would also provide that references to FINRA Rules 9551 and 9559 and to the FINRA Rule 9600 Series in FINRA Rule 2210 shall be construed as references to the Exchange's Rules 10.9551 and 10.9559 and to the Rule 10.9600 Series, respectively. Finally, proposed Rule 11.2210 would provide that all defined terms, including any variations thereof, contained in the rule shall be read to refer to the Exchange-related meaning of such term. The proposed rule is the same as the version adopted by the Exchange's affiliate NYSE National except that the Exchange would use "Participants" and "Participant Firms" rather than "ETP Holders" and would use "covered persons" rather than "Associated Persons of ETP Holders".⁸

Article 8, Rule 13, which governs advertising, promotion and telemarketing, would be renamed "Telemarketing" by deleting "Advertising" and "Promotion" from the current heading. The Exchange would also amend current Article 8, Rule 13 to remove those portions of the current rule that are duplicative of the standards set forth in FINRA Rule 2210. Specifically, the Exchange would delete subsection (a) prohibiting false and misleading advertisement, which is

⁸ See Securities Exchange Act Release No. 83289 (May 17, 2018), 83 FR 23968 (May 23, 2018) (SR-NYSENat-2018-02). The Exchange also proposes to insert a space between "Rule 11.5190" and "Notification" in the heading following proposed Rule 11.2210.

duplicative of FINRA Rule 2210(d)(1)(B);⁹ subsection (b) setting forth categories and standards of advertisement, which is duplicative of FINRA Rule 2210(a); and subsection (c) governing market letters and sales literature, which is duplicative of the approval and review requirements set forth in FINRA Rule 2210(b). The remaining thirteen subsections of Article 8, Rule 13 from (d) to (p) governing telemarketing practices would become new subsections (a) to (m), respectively. The remaining subsections of Article 8, Rule 13 overlap with FINRA Rule 3230 (Telemarketing).¹⁰

Exemption Request

The Exchange will request an exemption under Section 36 of the Act from the rule filing requirements of Section 19(b) of the Act with respect to the incorporation by reference of proposed Rule 11.2210 and to the extent Rule 11.2210 is effected solely by virtue of a change to cross-referenced FINRA rule.¹¹

Implementation

The proposed rule changes that are the subject of this filing will be operative on the same

⁹ Article 8, Rule 13(a) is currently subject to a plan for the allocation of regulatory responsibilities pursuant to Rule 17d-2 of the Act that the Exchange and FINRA have filed with the Commission (“17d-2 Plan”). See 17 CFR 240.17d-2; Securities Exchange Act Release No. 62657 (August 5, 2010), 75 FR 49005 (August 12, 2010) (No. 4-274) (Notice); Securities Exchange Act Release No. 62866 (September 8, 2010), 75 FR 55833 (August 14, 2010) (No. 4-274) (Order). The Exchange and FINRA are also parties to a Regulatory Services Agreement pursuant to which FINRA has agreed to perform certain regulatory functions of the Exchange on behalf of the Exchange and which cover the remaining subsections of Article 8, Rule 13 with the exception of subsection (d). See note 8, infra.

¹⁰ Article 8, Rule 13(d) is in fact part of the existing 17d-2 Plan. See Securities Exchange Act Release No. 85921 (May 23, 2019), 84 FR 25105 (May 30, 2019) (No. 4-274) (Notice); Securities Exchange Act Release No. 86161 (June 20, 2019), 84 FR 29923 (June 25, 2019) (No. 4-274) (Order).

¹¹ See 15 U.S.C. 78s(b).

date that the new disciplinary rules will be effective but only if the Exchange's request for an exemption under Section 36 of the Act from filing proposed rule changes, described above, is granted by that date. As explained in the Exchange's companion filing to adopt new disciplinary rules, once that proposed rule change is effective, the Exchange intends to announce by Information Memorandum with at least 30 days advance notice the operative date of the new rules. In the event the exemption is not granted by date announced in the proposed Information Memorandum, the Exchange will submit a filing to designate a different operative date.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Section 6(b)(5) of the Act,¹³ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that proposed Rule 11.2210, which would be new for the Exchange, would provide for a harmonized approach and promote application of consistent regulatory standards to Participant and Participant Firm requirements relating to communications with the public by incorporating by reference the FINRA communications with the public rule, thereby promoting just and equitable principles of trade and removing impediments to and perfecting the mechanism of a free and open market and a national market system, and in general, protecting investors and the public interest. In addition, incorporation of FINRA Rule

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

2210 by reference would add clarity and transparency to the Exchange's rules by separating the standards governing communications with the public and telemarketing into distinct rules similar to the approach taken by FINRA.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not designed to address any competitive issue but rather to provide greater harmonization between Exchange and FINRA rules of similar purpose relating to communications with the public.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁴ and Rule 19b-4(f)(6) thereunder.¹⁵ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such

¹⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁵ 17 CFR 240.19b-4(f)(6).

action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹⁶ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSECHX-2022-09 on the subject line.

Paper comments:

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSECHX-2022-09. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those

¹⁶ 15 U.S.C. 78s(b)(2)(B).

that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSECHX-2022-09 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

J. Matthew DeLesDernier
Assistant Secretary

¹⁷ 17 CFR 200.30-3(a)(12).